

Supreme Court, U. S.
FILED

OCT 18 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

77-

No. 511

IN THE MATTER

OF

WILLIS BENEKY,

Petitioner,

against

THE WATERFRONT COMMISSION OF NEW YORK HARBOR,
WILLIAM P. SIRIGNANO, Executive Director,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

IRVING MALCHMAN
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of the Waterfront Commission of
New York Harbor
Attorney for Respondent
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New York, New York
212-964-3520

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The respondent herein, the Waterfront Commission of New York Harbor, submits this brief in opposition for the purpose of bringing to the attention of the Court the fact that the petition for certiorari herein is out of time and accordingly is required to be denied. The decision of the Court of Appeals of the State of New York sought to be reviewed is dated June 30, 1977 (Ex. C to petition, p. 22). The remittitur of the Court of Appeals is also dated June 30, 1977 (Appendix A, *infra*). Hence, the judgment of the Court of Appeals sought to be reviewed was entered June 30, 1977.

The petition was thus required to be filed with this Court ninety days after June 30, 1977 (28 U.S.C., § 2101(c)), that is, on or before September 28, 1977. However, the petition was not in fact filed with this Court until September 30, 1977. Accordingly, as stated, the petition is untimely and is therefore required to be denied.

Respectfully submitted,

IRVING MALCHMAN
Director of Litigation and Research
of the Waterfront Commission of
New York Harbor
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150 William Street
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212-964-3520

Dated: October 14, 1977

APPENDIX A

Remittitur.

COURT OF APPEALS STATE OF NEW YORK

No. 384

In the Matter of
Willis Beneky,

Appellant,

vs.

The Waterfront Commission of New York Harbor,
William P. Sirignano, Executive Director,

Respondent.

The appellant(s) in the above entitled appeal appeared by Hartman & Alpert; the respondent(s) appeared by Irving Malchman.

The Court, after due deliberation, orders and adjudges that the order is affirmed, with costs, in a memorandum. All concur.

The Court further orders that the papers required to be filed and this record of the proceedings in this Court be remitted to the Supreme Court, New York County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.

DONALD M. SHAW
Deputy, Clerk of the Court

Court of Appeals, Clerk's Office, Albany, June 30, 1977.